TURKEY

TRADE SUMMARY

In 2000, the U.S. trade surplus with Turkey was $689 million, up from $570 million in 1999. U.S. merchandise exports to Turkey were $3.7 billion, an increase of $534 million from the level of exports in 1999. Turkey was the United States' 29th largest export market in 2000. U.S. merchandise imports from Turkey were $3.0 billion, up $415 million from 1999.

The stock of U.S. foreign direct investment in Turkey was $1.3 billion in 1999. Such investment was concentrated primarily in the manufacturing, banking, and petroleum sectors.

IMPORT POLICIES

Tariffs and Quantitative Restrictions

The introduction of Turkey's customs union with the European Union in 1996 resulted in substantial revisions to Turkey's tariff regime. Turkey now applies the EU's common external customs tariff for third country (including U.S.) imports and imposes no duty on non-agricultural items from EU and European Free Trade Association (EFTA) countries. The weighted rate of protection for industrial products from the United States and other third countries dropped from 11 percent to six percent with the introduction of the customs union and to four percent at the end of 2000. Higher transitional tariffs on imports of sensitive goods (including automobiles, leather and ceramics) from third countries also are being gradually phased out. Further reductions in the general tariff level are not likely to affect U.S. exports significantly.

The customs union has helped the EU consolidate its trade relations with Turkey. The EU decision in December 1999 to confirm Turkey as an EU candidate served to further strengthen the EU's position as Turkey's primary trading partner. In particular, the harmonization of regulations will simplify import procedures for EU goods, but also should improve the general import climate.

Turkey maintains high tariff rates on many agricultural and food products to protect domestic producers. These include fruits and fruit juice (up to 140 percent), raisins (58 percent), grains (50 percent), sunflower seeds (35 percent), rice (35 percent) and meats (232 percent). High feed input prices have resulted in inflated prices for poultry and beef. Rates can vary during the year, depending on the availability of domestically produced crops. During recent years, corn duties fluctuated from 30 percent to 60 percent, while duties on milling wheat varied from five percent to 55 percent. Under its EU customs union and other bilateral agreements, imports of about 300,000 tons wheat and 20,000 tons of rice are duty-free. The World Bank has recommended that agricultural tariffs be lowered and other trade barriers be eliminated.

The Turkish Government also levies high duties, as well as domestic taxes and other charges, on imported alcoholic beverages that increase wholesale prices by more than

200 percent.

Import Licenses and other Restrictions

Non-tariff barriers result in costly delays, demurrage charges, and other uncertainties that stifle trade for many agricultural products. Changes in import policies and phytosanitary requirements are not notified to the WTO and are often communicated verbally, rather than in writing, with varying levels of enforcement. Import permits for some products that previously were issued by Ministry of Agriculture (MARA) officials at ports of entry must now be cleared by headquarters in Ankara. Wheat import permits are only issued to flour product exporters and EU-quota holders. In 2000, the specifications for imported corn were tightened with no scientific justification. MARA stopped issuing permits for paddy rice during the domestic rice harvest period from September - November 2000, disrupting U.S. export sales. Also, U.S. rice exports were displaced by a zero-duty import quota for 28,000 tons of rice granted to the EU. MARA limited the quantity of bananas that can enter under each permit to 200MT and imposed new laboratory certification requirements. In December 2000, MARA implemented a similar policy for beans (50MT). Furthermore, for these two products, importers are issued only one permit at a time, discouraging larger, cost-effective shipments.

The import process for alcoholic beverages is exceedingly complicated, requiring both MARA control certificates and TEKEL (state parastatal) permits which strictly limit trade and distribution channels and are made available under only limited and unpredictable circumstances. The government is considering ways to liberalize TEKEL's monopoly power, but the initial proposal appears to maintain TEKEL's market dominance by allowing companies to import and distribute only if their annual sales exceed one million liters.

It is now more difficult for importers to obtain sanitary and phytosanitary certifications. For instance, MARA has begun to require official certification for lab results on certain food ingredient imports, including dioxin levels. U.S. regulatory agencies do not require such testing or certify these types of results. Requirements for labeling of GMO foods are under discussion. Although the Government officially lifted its ban on livestock imports in August 1999, MARA sets strict conditions for cattle imports and only a few thousand breeder cows were imported last year. The import of meat and slaughter cattle is banned.

A regulation in place since 1999 prohibits the import of new construction equipment manufactured in prior calendar years, limiting U.S. producers' ability to export to the Turkish market. In 2000, the government instituted a "grace period" to allow importation in the year following production if all export formalities are completed during the final six months of the year of production.

While import licenses generally are not required for industrial products, products which need after-sales service (e.g., office equipment, white goods, electronic and electrical consumer products, ADP equipment, diesel generators) and medical and agricultural commodities require licenses. In addition, the government requires laboratory tests and certification that quality standards are met for the importation of foods, human and veterinary drugs, and medical equipment and appliances intended for use by humans. In 2000, the government introduced a testing requirement on imported candles although no tests are required for domestically produced candles.

GOVERNMENT PROCUREMENT

Turkey is not a signatory of the WTO Government Procurement Agreement. It nominally follows competitive bidding procedures for tenders. U.S. companies sometimes become frustrated over lengthy and often complicated bidding and negotiating processes. Some tenders, especially large projects involving co-production, are frequently opened, closed, revised, and opened again. There often are numerous requests for "best offers"; in some cases, years have passed without the selection of a contractor.

Military procurement generally requires an offset provision in tender specifications when the estimated value of the imported goods and/or services exceeds five million dollars. Direct offsets, i.e., exports from Turkey of products, systems or parts directly or indirectly related to the project, are preferred. However, indirect offsets B new foreign capital investments and product exports in fields outside the project B have been accepted.

The entry into force of a Bilateral Tax Treaty between the United States and Turkey in 1998 eliminated the application of a 15 percent withholding tax on U.S. bidders for Turkish government contracts.

EXPORT SUBSIDIES

Domestic producers and exporters can take advantage of a number of government programs designed to support production for domestic and export markets, including cash and credit assistance for research and development projects, environmental projects, participation in trade fairs, market research and establishment of branch offices overseas. The Government provides subsidies for exports of a number of agricultural products including sugar and wheat. These subsidies are expected to be phased out as Turkey complies with the terms of its IMF and World Bank agreements. However in 2000 Turkey exceeded the 1.2 million metric ton ceiling on wheat subsidies to which it committed under the WTO. The Turkish Eximbank provides exporters with credits, guarantees, and insurance programs for non-agricultural products. Certain other tax credits also are available to exporters.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 1995, as part of Turkey's harmonization with the EU in advance of the customs union, the Turkish parliament approved new patent, trademark and copyright laws. Turkey also acceded to a number of multilateral intellectual property rights (IPR) conventions. Although the new laws provide an improved legal framework for protecting IPR, they require further amendments to be consistent with the standards contained in the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). The government has declared that it intends to have a TRIPS-compatible IPR regime in place as soon as possible. Amendments to the Copyright Law designed to meet this goal were approved unanimously by Turkey's Parliament in late February 2001.

Turkey has been on the Special 301 Priority Watch List since 1992. In the 1997 Special 301 review, the U.S. Trade Representative provided Turkey with a set of benchmarks necessary in order to improve its status in the Special 301 process. In April 1998, the United States announced that it would not consider requests to augment Turkey's benefits under the U.S. Generalized System of Preferences until further progress is made on the benchmarks. Benchmark items include: equalizing taxes on domestic films; ensuring that the government uses only properly licensed software; maintaining a public anti-piracy campaign; amending copyright and patent laws to provide for retroactive copyright protection, protecting proprietary data and clarifingy that importation constitutes working of a patent; amending the Cinema, Video and Music Works Law to include higher penalties; and sustaining enforcement efforts.

Turkey has made significant progress on five of the six benchmarks and is in the process of addressing the problems identified in the sixth. Taxes on the showing of foreign and domestic films were equalized in 1998. The Prime Minister issued a circular in 1998 directing all government agencies to ensure that they have proper licenses for the software used in their offices. A public anti-piracy campaign was begun in 1998 and the government has made efforts to educate businesses, consumers, judges and prosecutors regarding the implications of its laws. Turkey extended patent protection to pharmaceutical products in January 1999 in accordance with its customs union commitments to the EU and passed amendments to its copyright law in February 2001.

In August 1999, fines were increased by 800 percent and indexed to inflation. The Copyright Amendments approved in February 2001 further increase fines and set possible jail sentences of one to three years duration. Turkish police and prosecutors are working closely with trademark, patent and copyright holders to conduct raids against pirates within Turkey. Many seizures have been made (including by Turkish Customs officials at ports of entry), and several cases have been brought to conclusion successfully. Prior to the passage of the Copyright Law amendments, U.S. industry was concerned that fines and penalties levied by the courts did not serve as a significant deterrent. It is too early to evaluate the application of the new fines and penalties under the amended Copyright Law.

SERVICES BARRIERS

Accounting

Foreigners are not permitted to acquire, own an interest in, form a partnership with, merge with, establish, or affiliate with Turkish accounting firms. Owners and employees of accounting firms established in Turkey cannot acquire, own an interest in, form a partnership with, merge with, establish, or affiliate with foreign firms.

Names of foreign or affiliated firms cannot be used in the legal name of an auditing partnership or corporation, and cannot be used on letterheads and business cards.

Regulations prohibit the formation of partnerships among partners of different levels and titles. Also, qualified non-Turkish auditors are not permitted to practice on a basis equal to qualified Turkish auditors because of non-recognition of foreign-country professional certification and foreign education, and because of nationality requirements.

Legal Services

The practice of Turkish law and membership of the bar is restricted to Turkish nationals. A person cannot provide legal advice on foreign or international law without being licensed in the practice of Turkish law. Turkish lawyers are not permitted to form partnerships with foreign lawyers. However, some foreign law firms have established liaison or branch offices in Turkey, staffed by Turkish lawyers.

Architecture and Engineering

The Turkish government has discretionary authority to grant a percentage preference to domestic firms on public construction projects. Licensing of architects and engineers is limited to Turkish nationals. However, some large infrastructure projects including dams, power plants, highways, and railways are tendered for international firms. The foreign firms usually have local partners. All projects with foreign currency or foreign credit guarantees allocated by the Turkish Treasury and State Planning Organization are open to foreign engineering and construction companies. However, Turkish Treasury guarantees for new projects have been significantly reduced in order to meet strict fiscal goals under Turkey's disinflation program and Standby Agreement with the IMF.

Telecommunications Services

State-owned Turk Telekom currently provides basic telecommunications services, with the exception of two GSM licenses, operated by Turkcell and Telsim, which provide cellular telephone service. The Turkish government plans to sell 33.5 percent of Turk Telekom's shares to a strategic investor in 2001 as part of its announced privatization program.

In the WTO negotiations on Basic Telecommunications Services, Turkey made commitments to provide market access and national treatment for all services at the end of 2005, and permitted value-added telecommunications services to be licensed to the private sector with a 49 percent limit on foreign equity investment. In the interim, Turkey committed to provide national treatment for mobile, paging and private data networks. In 2000, the Turkish government passed a law unilaterally accelerating the opening of the market for basic telephone services to January 1, 2004. The law also created an independent regulatory body B the Telecommunications Regulatory Board B and made licensing criteria publicly available. U.S. firms complain that the licensing process still lacks transparency and about the fact that revenue sharing with Turk Telecom is required where competition is permitted.

INVESTMENT BARRIERS

The U.S.-Turkish Bilateral Investment Treaty (BIT) entered into force in May 1990. Turkey has a liberal investment regime in which foreign investments receive national treatment. There is a screening process for foreign investments, which the government applies on an MFN basis; once approved, firms with foreign capital are treated as local companies. Almost all areas open to the Turkish private sector are fully open to foreign participation, but establishments in the financial and petroleum sectors require special permission. The equity participation ratio of foreign shareholders is restricted to 20 percent in broadcasting and 49 percent in aviation, value added telecommunications services, and maritime transportation.

Turkey is a member of several international dispute settlement bodies. Nevertheless, until 1999, Turkish courts did not recognize investors' rights to third party arbitration under any contract defined as a concession. This was particularly problematic in the energy, telecommunications and transportation sectors. Constitutional amendments, accepted by the Parliament in 1999 granting access to international arbitration to foreign investors, largely corrected this problem. Investors in these sectors often expressed concern about the lack of clarity in the government approval process, lack of lender's step-in rights, the lack of lender rights to termination, and disparities between the rights of lenders and the rights of the Turkish Government to claim force majeure. The Turkish government passed legislation in February 2001 that will introduce a fully liberalized energy market in Turkey, under which private firms will develop projects with the approval of an independent regulatory body. The Turkish government also introduced a bill to Parliament designed to make government tenders more transparent.

ANTI-COMPETITIVE PRACTICES

As part of its customs union agreement with the EU, Turkey has pledged to adopt EU standards concerning competition and consumer protection. In 1997, a government "Competition Board" commenced operations, putting into force a 1994 competition law. Government monopolies in a number of areas, particularly alcohol and telecommunications services, have been scaled back in recent years, but remain a barrier to certain U.S. products and services.

Turkey embarked upon an ambitious disinflation program requiring strict adherence to fiscal and monetary policy prescriptions and completion of major structural reforms in January 2000. The program aims to liberalize and reform the economy, substantially reducing or eliminating barriers to trade and investment and bringing greater transparency to government decision-making processes. In February 2001, the Turkish government, in a move supported by the IMF, moved from a crawling peg to a free float exchange rate regime in response to a financial crisis. At the same time, the Turkish government reaffirmed its commitment to the program's underlying goals of fiscal discipline and structural reform. Consultations with the IMF should lead to the program's revision in the near term. Delays in the implementation of the program prior to the move to a floating exchange rate had created uncertainty about the future direction of the economy, thus acting as an informal barrier to further growth in trade and investment. The government must demonstrate firm commitment to reform in order to restore consumer and market confidence.